

# HOUSE BILL 1374

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By: **Chair, Environmental Matters Committee (By Request – Departmental – Labor, Licensing and Regulation)**

Introduced and read first time: February 22, 2012

Assigned to: Rules and Executive Nominations

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## A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Foreclosures and Mediation**

3 FOR the purpose of establishing a certain prefile mediation process between a secured  
4 party and a mortgagor or grantor before the commencement of a certain  
5 foreclosure action under certain circumstances; providing that a certain  
6 mortgagor or grantor is not entitled to participate in a certain postfile mediation  
7 except under certain circumstances; establishing certain procedures and notices  
8 for participation in a certain prefile mediation; altering certain procedures  
9 relating to foreclosure and postfile mediation; providing that certain vacant  
10 properties are not subject to certain provisions of law applicable to foreclosures  
11 and certain mediation processes if a certain certificate is issued under certain  
12 circumstances; authorizing a county or municipal corporation to issue to a  
13 secured party a certificate of vacancy or certificate of substantial repair for  
14 certain residential properties under certain circumstances; authorizing a record  
15 owner or occupant of residential property to challenge a certain determination  
16 of vacancy under certain circumstances; requiring the Commissioner of  
17 Financial Regulation to adopt certain regulations; defining certain terms;  
18 making conforming changes; providing for the validity, under certain  
19 circumstances, of a certain order to docket or complaint to foreclose served on a  
20 mortgagor or grantor before the effective date of certain regulations; and  
21 generally relating to mortgage foreclosures and mediation.

22 BY repealing and reenacting, with amendments,  
23 Article – Real Property  
24 Section 7–105.1  
25 Annotated Code of Maryland  
26 (2010 Replacement Volume and 2011 Supplement)

27 BY adding to  
28 Article – Real Property

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 7–105.11  
2 Annotated Code of Maryland  
3 (2010 Replacement Volume and 2011 Supplement)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
5 MARYLAND, That the Laws of Maryland read as follows:

6 **Article – Real Property**

7 7–105.1.

8 (a) (1) In this section the following words have the meanings indicated.

9 (2) “Final loss mitigation affidavit” means an affidavit that:

10 (i) Is made by a person authorized to act on behalf of a secured  
11 party of a mortgage or deed of trust on owner–occupied residential property that is the  
12 subject of a foreclosure action;

13 (ii) Certifies the completion of the final determination of loss  
14 mitigation analysis in connection with the mortgage or deed of trust; and

15 (iii) If denied, provides an explanation for the denial of a loan  
16 modification or other loss mitigation.

17 (3) “Foreclosure mediation” means a conference at which the parties in  
18 a foreclosure action, their attorneys, additional representatives of the parties, or a  
19 combination of those persons appear before an impartial individual to discuss the  
20 positions of the parties in an attempt to reach agreement on a loss mitigation program  
21 for the mortgagor or grantor.

22 (4) “Housing counseling services” means assistance provided to  
23 mortgagors or grantors by nonprofit and governmental entities that are identified on a  
24 list maintained by the Department of Housing and Community Development.

25 (5) “Loss mitigation analysis” means an evaluation of the facts and  
26 circumstances of a loan secured by owner–occupied residential property to determine:

27 (i) Whether a mortgagor or grantor qualifies for a loan  
28 modification; and

29 (ii) If there will be no loan modification, whether any other loss  
30 mitigation program may be made available to the mortgagor or grantor.

31 (6) “Loss mitigation program” means an option in connection with a  
32 loan secured by owner–occupied residential property that:

1 (i) Avoids foreclosure through loan modification or other  
2 changes to existing loan terms that are intended to allow the mortgagor or grantor to  
3 stay in the property;

4 (ii) Avoids foreclosure through a short sale, deed in lieu of  
5 foreclosure, or other alternative that is intended to simplify the mortgagor's or  
6 grantor's relinquishment of ownership of the property; or

7 (iii) Lessens the harmful impact of foreclosure on the mortgagor  
8 or grantor.

9 (7) "Owner-occupied residential property" means residential property  
10 in which at least one unit is occupied by an individual who:

11 (i) Has an ownership interest in the property; and

12 (ii) Uses the property as the individual's primary residence.

13 **(8) "POSTFILE MEDIATION" MEANS FORECLOSURE MEDIATION**  
14 **THAT OCCURS IN ACCORDANCE WITH SUBSECTION (J) OF THIS SECTION AFTER**  
15 **THE DATE ON WHICH THE ORDER TO DOCKET OR COMPLAINT TO FORECLOSE IS**  
16 **FILED.**

17 **(9) "PREFILE MEDIATION" MEANS FORECLOSURE MEDIATION**  
18 **THAT OCCURS IN ACCORDANCE WITH SUBSECTION (D) OF THIS SECTION BEFORE**  
19 **THE DATE ON WHICH THE ORDER TO DOCKET OR COMPLAINT TO FORECLOSE IS**  
20 **FILED.**

21 **[(8)] (10)** "Preliminary loss mitigation affidavit" means an affidavit  
22 that:

23 (i) Is made by a person authorized to act on behalf of a secured  
24 party of a mortgage or deed of trust on owner-occupied residential property that is the  
25 subject of a foreclosure action;

26 (ii) Certifies the status of an incomplete loss mitigation analysis  
27 in connection with the mortgage or deed of trust; and

28 (iii) Includes reasons why the loss mitigation analysis is  
29 incomplete.

30 **[(9)] (11)** "Residential property" means real property improved by four  
31 or fewer single family dwelling units that are designed principally and are intended  
32 for human habitation.

1 (b) (1) Except as provided in paragraph (2) of this subsection, an action to  
2 foreclose a mortgage or deed of trust on residential property may not be filed until the  
3 later of:

4 (i) 90 days after a default in a condition on which the mortgage  
5 or deed of trust provides that a sale may be made; or

6 (ii) 45 days after the notice of intent to foreclose required under  
7 subsection (c) of this section is sent.

8 (2) (i) The secured party may petition the circuit court for leave to  
9 immediately commence an action to foreclose the mortgage or deed of trust if:

10 1. The loan secured by the mortgage or deed of trust was  
11 obtained by fraud or deception;

12 2. No payments have ever been made on the loan  
13 secured by the mortgage or deed of trust;

14 3. The property subject to the mortgage or deed of trust  
15 has been destroyed; or

16 4. The default occurred after the stay has been lifted in a  
17 bankruptcy proceeding.

18 (ii) The court may rule on the petition with or without a  
19 hearing.

20 (iii) If the petition is granted, the action may be filed at any time  
21 after a default in a condition on which the mortgage or deed of trust provides that a  
22 sale may be made and the secured party need not send the written notice of intent to  
23 foreclose required under subsection (c) of this section.

24 (c) (1) Except as provided in subsection (b)(2)(iii) of this section, at least  
25 45 days before the filing of an action to foreclose a mortgage or deed of trust on  
26 residential property, the secured party shall send a written notice of intent to foreclose  
27 to the mortgagor or grantor and the record owner.

28 (2) The notice of intent to foreclose shall be sent:

29 (i) By certified mail, postage prepaid, return receipt requested,  
30 bearing a postmark from the United States Postal Service; and

31 (ii) By first-class mail.

32 (3) A copy of the notice of intent to foreclose shall be sent to the  
33 Commissioner of Financial Regulation.

1           (4)    The notice of intent to foreclose shall:

2                   (i)    Be in the form that the Commissioner of Financial  
3 Regulation prescribes by regulation; and

4                   (ii)   Contain:

5                           1.    The name and telephone number of:

6                                   A.    The secured party;

7                                   B.    The mortgage servicer, if applicable; and

8                                   C.    An agent of the secured party who is authorized to  
9 modify the terms of the mortgage loan;

10                           2.    The name and license number of the Maryland  
11 mortgage lender and mortgage originator, if applicable;

12                           3.    The amount required to cure the default and reinstate  
13 the loan, including all past due payments, penalties, and fees;

14                           4.    A statement recommending that the mortgagor or  
15 grantor seek housing counseling services;

16                           5.    The telephone number and the Internet address of  
17 nonprofit and government resources available to assist mortgagors and grantors facing  
18 foreclosure, as identified by the Commissioner of Financial Regulation;

19                           6.    An explanation of the Maryland foreclosure process  
20 and time line, as prescribed by the Commissioner of Financial Regulation; and

21                           7.    Any other information that the Commissioner of  
22 Financial Regulation requires by regulation.

23           (5)    For an owner-occupied residential property, the notice of intent to  
24 foreclose shall be accompanied by:

25                   (i)    A loss mitigation application:

26                           1.    For loss mitigation programs that are applicable to  
27 the loan secured by the mortgage or deed of trust that is the subject of the foreclosure  
28 action; or

1                   2.    If the secured party does not have its own loss  
2 mitigation application, in the form prescribed by the Commissioner of Financial  
3 Regulation;

4                   (ii)   Instructions for completing the loss mitigation application  
5 and a telephone number to call to confirm receipt of the application;

6                   (iii)   A description of the eligibility requirements for the loss  
7 mitigation programs offered by the secured party that may be applicable to the loan  
8 secured by the mortgage or deed of trust that is the subject of the foreclosure action;  
9 [and]

10                  (iv)   An envelope addressed to the person responsible for  
11 conducting loss mitigation analysis on behalf of the secured party for the loan secured  
12 by the mortgage or deed of trust that is the subject of the foreclosure action;

13                  **(V)    IF THE SECURED PARTY OFFERS PREFILE MEDIATION, A  
14 NOTICE IN THE FORM THAT THE COMMISSIONER OF FINANCIAL REGULATION  
15 PRESCRIBES BY REGULATION THAT STATES THAT:**

16                               **1.    THE    SECURED    PARTY    OFFERS    PREFILE  
17 MEDIATION;**

18                               **2.    THE MORTGAGOR OR GRANTOR MAY ELECT TO  
19 PARTICIPATE IN PREFILE MEDIATION;**

20                               **3.    THE MORTGAGOR OR GRANTOR WILL NOT BE  
21 ENTITLED TO POSTFILE MEDIATION IF THE MORTGAGOR OR GRANTOR  
22 PARTICIPATES IN PREFILE MEDIATION, EXCEPT AS OTHERWISE PROVIDED IN A  
23 PREFILE MEDIATION AGREEMENT;**

24                               **4.    THE MORTGAGOR OR GRANTOR IS REQUIRED TO  
25 PARTICIPATE IN HOUSING COUNSELING SERVICES AS A PRECONDITION TO  
26 PREFILE MEDIATION; AND**

27                               **5.    A FEE WILL BE CHARGED FOR THE PREFILE  
28 MEDIATION AND THE AMOUNT OF THE FEE; AND**

29                  **(VI)   IF THE SECURED PARTY OFFERS PREFILE MEDIATION,  
30 AN APPLICATION TO PARTICIPATE IN PREFILE MEDIATION AND INSTRUCTIONS  
31 TO COMPLETE AND SUBMIT THE APPLICATION, ALL IN THE FORM THAT THE  
32 COMMISSIONER OF FINANCIAL REGULATION PRESCRIBES BY REGULATION.**

33                  (6)    For a property that is not an owner-occupied residential property,  
34 the notice of intent to foreclose shall be accompanied by:

1 (i) A written notice of the determination that the property is  
2 not owner-occupied residential property; and

3 (ii) A telephone number to call to contest that determination.

4 **(D) (1) FOR OWNER-OCCUPIED RESIDENTIAL PROPERTY, A SECURED**  
5 **PARTY MAY OFFER TO PARTICIPATE IN PREFILE MEDIATION WITH A**  
6 **MORTGAGOR OR GRANTOR TO WHOM THE SECURED PARTY HAS DELIVERED A**  
7 **NOTICE OF INTENT TO FORECLOSE.**

8 **(2) IF OFFERED BY A SECURED PARTY, A MORTGAGOR OR**  
9 **GRANTOR MAY ELECT TO PARTICIPATE IN PREFILE MEDIATION.**

10 **(3) IF A MORTGAGOR OR GRANTOR ELECTS TO PARTICIPATE IN**  
11 **PREFILE MEDIATION, THE MORTGAGOR OR GRANTOR SHALL NOTIFY THE**  
12 **SECURED PARTY BY SUBMITTING THE APPLICATION DESCRIBED IN SUBSECTION**  
13 **(C)(5)(VI) OF THIS SECTION NOT MORE THAN 25 DAYS AFTER THE DATE ON**  
14 **WHICH THE NOTICE OF INTENT TO FORECLOSE IS MAILED BY THE SECURED**  
15 **PARTY.**

16 **(4) (I) AS A PRECONDITION TO PREFILE MEDIATION, A**  
17 **MORTGAGOR OR GRANTOR SHALL PARTICIPATE IN HOUSING COUNSELING**  
18 **SERVICES.**

19 **(II) THE DEPARTMENT OF HOUSING AND COMMUNITY**  
20 **DEVELOPMENT SHALL PRESCRIBE THE TIMING AND FORM OF CERTIFICATION**  
21 **OF PARTICIPATION IN HOUSING COUNSELING SERVICES.**

22 **(5) IF A MORTGAGOR OR GRANTOR SUBMITS AN APPLICATION TO**  
23 **PARTICIPATE IN PREFILE MEDIATION TO THE SECURED PARTY IN ACCORDANCE**  
24 **WITH PARAGRAPH (3) OF THIS SUBSECTION, THE SECURED PARTY SHALL**  
25 **NOTIFY THE OFFICE OF ADMINISTRATIVE HEARINGS NOT MORE THAN 5**  
26 **BUSINESS DAYS AFTER THE DATE ON WHICH THE SECURED PARTY RECEIVES**  
27 **THE APPLICATION.**

28 **(6) THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL:**

29 **(I) SCHEDULE A PREFILE MEDIATION SESSION NOT MORE**  
30 **THAN 60 DAYS AFTER THE DAY ON WHICH IT RECEIVES NOTICE BY A SECURED**  
31 **PARTY OF AN ELECTION TO PARTICIPATE IN PREFILE MEDIATION; AND**

32 **(II) NOTIFY THE PARTIES AND THEIR ATTORNEYS, IF ANY,**  
33 **OF THE DATE OF THE PREFILE MEDIATION SESSION.**

1           **(7) BY REGULATION, THE COMMISSIONER OF FINANCIAL**  
2 **REGULATION SHALL:**

3                   **(I) ESTABLISH THE FEE FOR PREFILE MEDIATION; AND**

4                   **(II) PRESCRIBE THE FORM AND CONTENT OF THE NOTICE**  
5 **ABOUT PREFILE MEDIATION, THE APPLICATION TO PARTICIPATE IN PREFILE**  
6 **MEDIATION, AND INSTRUCTIONS TO COMPLETE THE APPLICATION.**

7           **(8) (I) NOTWITHSTANDING SUBSECTION (B)(1) OF THIS**  
8 **SECTION, IF THE SECURED PARTY AND GRANTOR OR MORTGAGOR ELECT TO**  
9 **PARTICIPATE IN PREFILE MEDIATION, AN ORDER TO DOCKET OR COMPLAINT TO**  
10 **FORECLOSE MAY NOT BE FILED UNTIL THE COMPLETION OF PREFILE**  
11 **MEDIATION IN ACCORDANCE WITH THIS SECTION.**

12                   **(II) THE DATE THAT PREFILE MEDIATION IS COMPLETED IS**  
13 **THE DATE THAT THE OFFICE OF ADMINISTRATIVE HEARINGS ISSUES THE**  
14 **REPORT DESCRIBING THE RESULTS OF THE PREFILE MEDIATION.**

15           **(9) THE FEE FOR PREFILE MEDIATION COLLECTED UNDER THIS**  
16 **SUBSECTION SHALL BE DISTRIBUTED TO THE HOUSING COUNSELING AND**  
17 **FORECLOSURE MEDIATION FUND ESTABLISHED UNDER § 4-507 OF THE**  
18 **HOUSING AND COMMUNITY DEVELOPMENT ARTICLE.**

19           **(10) BY REGULATION, THE COMMISSIONER OF FINANCIAL**  
20 **REGULATION SHALL ESTABLISH A MEDIATION CHECKLIST THAT DESCRIBES**  
21 **THE MATTERS THAT SHALL BE REVIEWED AND CONSIDERED IN A PREFILE**  
22 **MEDIATION.**

23                   **(11) (I) AT THE COMMENCEMENT OF A PREFILE MEDIATION**  
24 **SESSION, EACH PARTY SHALL REVIEW THE MEDIATION CHECKLIST.**

25                   **(II) THE MEDIATOR SHALL MARK EACH ITEM ON THE**  
26 **MEDIATION CHECKLIST AS THE ITEM IS ADDRESSED AT THE PREFILE**  
27 **MEDIATION SESSION.**

28                   **(III) AT THE CONCLUSION OF A PREFILE MEDIATION**  
29 **SESSION, EACH PARTY SHALL SIGN THE MEDIATION CHECKLIST.**

30           **(12) IF THE PREFILE MEDIATION RESULTS IN AN AGREEMENT, THE**  
31 **PARTIES SHALL EXECUTE A PREFILE MEDIATION AGREEMENT.**

1           **(13) IN ADDITION TO DESCRIBING THE TERMS OF THE AGREEMENT**  
2 **AMONG THE PARTIES, THE PREFILE MEDIATION AGREEMENT SHALL, IN**  
3 **14 POINT, BOLD FONT:**

4           **(I) DESIGNATE THE PERSON AND ADDRESS TO WHOM THE**  
5 **MORTGAGOR OR GRANTOR MAY PROVIDE NOTICE OF A CHANGE OF FINANCIAL**  
6 **CIRCUMSTANCES; AND**

7           **(II) STATE THAT THE MORTGAGOR OR GRANTOR IS NOT**  
8 **ENTITLED TO POSTFILE MEDIATION UNLESS OTHERWISE AGREED BY THE**  
9 **PARTIES.**

10           **(14) THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL DRAFT**  
11 **THE PREFILE MEDIATION AGREEMENT AND PROVIDE A COPY OF THE EXECUTED**  
12 **AGREEMENT TO THE PARTIES AND THEIR ATTORNEYS, IF ANY.**

13           **(15) THE OFFICE OF ADMINISTRATIVE HEARINGS SHALL PROVIDE**  
14 **A REPORT OF RESULTS OF MEDIATION TO THE PARTIES AND THEIR ATTORNEYS,**  
15 **IF ANY.**

16           **(16) IF A MORTGAGOR OR GRANTOR NOTIFIES THE PERSON**  
17 **DESIGNATED UNDER PARAGRAPH (13) OF THIS SUBSECTION OF A CHANGE OF**  
18 **FINANCIAL CIRCUMSTANCES, THE DESIGNEE SHALL:**

19           **(I) DETERMINE WHETHER THE CHANGE OF FINANCIAL**  
20 **CIRCUMSTANCES SHALL ALTER THE MEDIATION AGREEMENT OR OUTCOME OF**  
21 **THE PREFILE MEDIATION; AND**

22           **(II) NOTIFY THE MORTGAGOR OR GRANTOR OF THE**  
23 **DETERMINATION BY FIRST-CLASS MAIL BEFORE ANY ADDITIONAL ACTION IS**  
24 **TAKEN WITH RESPECT TO FORECLOSURE.**

25           **(17) (I) THE PARTIES TO THE PREFILE MEDIATION AGREEMENT**  
26 **MAY EXECUTE AN AMENDED PREFILE MEDIATION AGREEMENT BASED ON A**  
27 **MATERIAL CHANGE OF FINANCIAL CIRCUMSTANCES OF THE MORTGAGOR OR**  
28 **GRANTOR.**

29           **(II) THE SECURED PARTY SHALL PROVIDE A COPY OF THE**  
30 **EXECUTED AMENDED AGREEMENT TO THE MORTGAGOR OR GRANTOR.**

31           **(18) TO THE EXTENT THAT A NOTICE OF INTENT TO FORECLOSE**  
32 **COMPLIES WITH THIS SECTION AND OTHERWISE IS VALID UNDER THE LAW, A**  
33 **NOTICE OF INTENT TO FORECLOSE ISSUED WITH RESPECT TO A PROPERTY THAT**

1 HAS BEEN THE SUBJECT OF PREFILE MEDIATION CONTINUES TO BE VALID FOR 1  
2 YEAR AFTER THE DATE ON WHICH THE INITIAL PREFILE MEDIATION  
3 AGREEMENT IS EXECUTED BY THE PARTIES.

4 (19) NOTHING IN THIS SUBSECTION SHALL PROHIBIT A SECURED  
5 PARTY AND MORTGAGOR OR GRANTOR FROM ENGAGING IN LOSS MITIGATION BY  
6 OTHER MEANS.

7 [(d)] (E) An order to docket or a complaint to foreclose a mortgage or deed of  
8 trust on residential property shall:

9 (1) Include:

10 (i) If applicable, the license number of:

11 1. The mortgage originator; and

12 2. The mortgage lender; and

13 (ii) An affidavit stating:

14 1. The date on which the default occurred and the  
15 nature of the default; and

16 2. If applicable, that:

17 A. A notice of intent to foreclose was sent to the  
18 mortgagor or grantor in accordance with subsection (c) of this section and the date on  
19 which the notice was sent; and

20 B. At the time the notice of intent to foreclose was sent,  
21 the contents of the notice of intent to foreclose were accurate; and

22 (2) Be accompanied by:

23 (i) The original or a certified copy of the mortgage or deed of  
24 trust;

25 (ii) A statement of the debt remaining due and payable  
26 supported by an affidavit of the plaintiff or the secured party or the agent or attorney  
27 of the plaintiff or secured party;

28 (iii) A copy of the debt instrument accompanied by an affidavit  
29 certifying ownership of the debt instrument;

1 (iv) If applicable, the original or a certified copy of the  
2 assignment of the mortgage for purposes of foreclosure or the deed of appointment of a  
3 substitute trustee;

4 (v) If any defendant is an individual, an affidavit that is in  
5 compliance with § 521 of the Servicemembers Civil Relief Act, 50 U.S.C. App. § 501 et  
6 seq.;

7 (vi) If applicable, a copy of the notice of intent to foreclose;

8 **(VII) IF THE SECURED PARTY AND MORTGAGOR OR GRANTOR**  
9 **HAVE ELECTED TO PARTICIPATE IN PREFILE MEDIATION, THE REPORT OF THE**  
10 **PREFILE MEDIATION ISSUED BY THE OFFICE OF ADMINISTRATIVE HEARINGS;**

11 **(VIII) IF THE SECURED PARTY AND THE MORTGAGOR OR**  
12 **GRANTOR HAVE NOT ELECTED TO PARTICIPATE IN PREFILE MEDIATION, A**  
13 **STATEMENT THAT THE PARTIES HAVE NOT ELECTED TO PARTICIPATE IN**  
14 **PREFILE MEDIATION;**

15 [(vii)] **(IX)** In addition to any other filing fees required by law, a  
16 filing fee in the amount of \$300; and

17 [(viii)] **(X)** 1. If the loss mitigation analysis has been  
18 completed subject to subsection [(e)] **(G)** of this section, a final loss mitigation affidavit  
19 in the form prescribed by regulation adopted by the Commissioner of Financial  
20 Regulation; and

21 2. If the loss mitigation analysis has not been completed,  
22 a preliminary loss mitigation affidavit in the form prescribed by regulation adopted by  
23 the Commissioner of Financial Regulation.

24 [(d-1)] **(F)** Notwithstanding any other law, the court may not accept a lost  
25 note affidavit in lieu of a copy of the debt instrument required under subsection  
26 [(d)(2)(iii)] **(E)(2)(III)** of this section, unless the affidavit:

27 (1) Identifies the owner of the debt instrument and states from whom  
28 and the date on which the owner acquired ownership;

29 (2) States why a copy of the debt instrument cannot be produced; and

30 (3) Describes the good faith efforts made to produce a copy of the debt  
31 instrument.

32 [(e)] **(G)** Only for purposes of a final loss mitigation affidavit that is filed  
33 with an order to docket or complaint to foreclose, a loss mitigation analysis is not

1 considered complete if the reason for the denial or determination of ineligibility is due  
2 to the inability of the secured party to:

3 (1) Establish communication with the mortgagor or grantor; or

4 (2) Obtain all documentation and information necessary to conduct the  
5 loss mitigation analysis.

6 **[(f)] (H)** (1) A copy of the order to docket or complaint to foreclose on  
7 residential property and all other papers filed with it in the form and sequence as  
8 prescribed by regulations adopted by the Commissioner of Financial Regulation,  
9 accompanied by the documents required under paragraphs (2), (3), and (4) of this  
10 subsection, shall be served on the mortgagor or grantor by:

11 (i) Personal delivery of the papers to the mortgagor or grantor;  
12 or

13 (ii) Leaving the papers with a resident of suitable age and  
14 discretion at the mortgagor's or grantor's dwelling house or usual place of abode.

15 (2) The service of documents under paragraph (1) of this subsection  
16 shall be accompanied by a separate, clearly marked notice, in the form prescribed by  
17 regulation adopted by the Commissioner of Financial Regulation, that states:

18 (i) The significance of the order to docket or a complaint to  
19 foreclose; [and]

20 (ii) The options for the mortgagor or grantor to take, including  
21 housing counseling **SERVICES** and financial assistance resources the mortgagor or  
22 grantor may consult; **AND**

23 **(III) IN THE CASE OF A MORTGAGOR OR GRANTOR WHO HAS**  
24 **PARTICIPATED IN PREFILE MEDIATION, THAT THE MORTGAGOR OR GRANTOR IS**  
25 **NOT ENTITLED TO POSTFILE MEDIATION EXCEPT AS OTHERWISE PROVIDED IN**  
26 **THE PREFILE MEDIATION AGREEMENT.**

27 (3) If the order to docket or complaint to foreclose is accompanied by a  
28 preliminary loss mitigation affidavit, the service of documents under paragraph (1) of  
29 this subsection shall be accompanied by a loss mitigation application form and any  
30 other supporting documents as prescribed by regulation adopted by the Commissioner  
31 of Financial Regulation.

32 (4) **(I) [If] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF**  
33 **THIS PARAGRAPH, IF** the order to docket or complaint to foreclose is accompanied by  
34 a final loss mitigation affidavit and concerns owner-occupied residential property, the  
35 service of documents under paragraph (1) of this subsection shall be accompanied by a

1 request for [foreclosure] POSTFILE mediation form and any other supporting  
2 documents as prescribed by regulation adopted by the Commissioner of Financial  
3 Regulation.

4 **(II) THE ORDER TO DOCKET OR COMPLAINT TO FORECLOSE**  
5 **MAY EXCLUDE THE REQUEST FOR A POSTFILE MEDIATION FORM IF:**

6 **1. THE MORTGAGOR OR GRANTOR HAS**  
7 **PARTICIPATED IN PREFILE MEDIATION AND THE PREFILE MEDIATION**  
8 **AGREEMENT DOES NOT GIVE THE MORTGAGOR OR GRANTOR THE RIGHT TO**  
9 **PARTICIPATE IN POSTFILE MEDIATION; OR**

10 **2. THE PROPERTY SUBJECT TO THE MORTGAGE OR**  
11 **DEED OF TRUST IS NOT OWNER–OCCUPIED.**

12 (5) If at least two good faith efforts to serve the mortgagor or grantor  
13 under paragraph (1) of this subsection on different days have not succeeded, the  
14 plaintiff may effect service by:

15 (i) Filing an affidavit with the court describing the good faith  
16 efforts to serve the mortgagor or grantor; and

17 (ii) 1. Mailing a copy of all the documents required to be  
18 served under paragraph (1) of this subsection by certified mail, return receipt  
19 requested, and first–class mail to the mortgagor’s or grantor’s last known address and,  
20 if different, to the address of the residential property subject to the mortgage or deed  
21 of trust; and

22 2. Posting a copy of all the documents required to be  
23 served under paragraph (1) of this subsection in a conspicuous place on the residential  
24 property subject to the mortgage or deed of trust.

25 (6) The individual making service of documents under this subsection  
26 shall file proof of service with the court in accordance with the Maryland Rules.

27 **[(g)] (I)** (1) If the order to docket or complaint to foreclose is  
28 accompanied by a preliminary loss mitigation affidavit, the secured party, at least 30  
29 days before the date of a foreclosure sale, shall:

30 (i) File with the court a final loss mitigation affidavit in the  
31 form prescribed by regulation adopted by the Commissioner of Financial Regulation;  
32 and

33 (ii) Send to the mortgagor or grantor by first class and by  
34 certified mail:

- 1                   1.     A copy of the final loss mitigation affidavit; and
- 2                   2.     A request for [foreclosure] **POSTFILE** mediation form
- 3 and supporting documents as provided under subsection [(f)(4)] **(H)(4)** of this section.

4                   (2)     A final loss mitigation affidavit shall be filed under this subsection

5 no earlier than 28 days after the order to docket or complaint to foreclose is served on

6 the mortgagor or grantor.

7                   [(h)] **(J)**     (1)     (i)     **THIS PARAGRAPH APPLIES TO A MORTGAGOR OR**

8 **GRANTOR WHO:**

9                             1.     **HAS NOT PARTICIPATED IN PREFILE MEDIATION;**

10 **OR**

11                             2.     **HAS PARTICIPATED IN PREFILE MEDIATION THAT**

12 **RESULTED IN A PREFILE MEDIATION AGREEMENT THAT GIVES THE MORTGAGOR**

13 **OR GRANTOR THE RIGHT TO PARTICIPATE IN POSTFILE MEDIATION.**

14                   **(II)**     In a foreclosure action on owner-occupied residential

15 property, the mortgagor or grantor may file with the court a completed request for

16 [foreclosure] **POST-FILE** mediation not later than:

17                             1.     If the final loss mitigation affidavit was delivered

18 along with service of the copy of the order to docket or complaint to foreclose under

19 subsection [(f)] **(H)** of this section, 25 days after that service on the mortgagor or

20 grantor; or

21                             2.     If the final loss mitigation affidavit was mailed as

22 provided in subsection [(g)] **(I)** of this section, 25 days after the mailing of the final

23 loss mitigation affidavit.

24                             [(ii)] **(III)**   1.     A request for [foreclosure] **POSTFILE**

25 mediation shall be accompanied by a filing fee of \$50.

26                             2.     The court may reduce or waive the filing fee under

27 subparagraph 1 of this subparagraph if the mortgagor or grantor is eligible for a

28 reduction or waiver under the Maryland Legal Services guidelines.

29                             [(iii)] **(IV)**   The mortgagor or grantor shall mail a copy of the

30 request for [foreclosure] **POSTFILE** mediation to the secured party's foreclosure

31 attorney.

32                             (2)     (i)     The secured party may file a motion to strike the request for

33 [foreclosure] **POSTFILE** mediation in accordance with the Maryland Rules.

1 (ii) The motion to strike must be accompanied by an affidavit  
2 that sets forth the reasons why [foreclosure] **POSTFILE** mediation is not appropriate.

3 (iii) The secured party shall mail a copy of the motion to strike  
4 and the accompanying affidavit to the mortgagor or grantor.

5 (iv) There is a presumption that a mortgagor or grantor is  
6 entitled to [foreclosure] **POSTFILE** mediation **WITH RESPECT TO**  
7 **OWNER–OCCUPIED RESIDENTIAL PROPERTY** unless [good]:

8 1. **GOOD** cause is shown why [foreclosure] **POSTFILE**  
9 mediation is not appropriate; **OR**

10 2. **THE MORTGAGOR OR GRANTOR PARTICIPATED IN**  
11 **PREFILE MEDIATION AND THE PREFILE MEDIATION AGREEMENT DOES NOT**  
12 **GIVE THE MORTGAGOR OR GRANTOR THE RIGHT TO PARTICIPATE IN POSTFILE**  
13 **MEDIATION.**

14 (3) (i) The mortgagor or grantor may file a response to the motion  
15 to strike within 15 days.

16 (ii) The mortgagor or grantor shall mail a copy of the response  
17 to the foreclosure attorney.

18 (iii) If the court grants the motion to strike, the court shall  
19 instruct the Office of Administrative Hearings to cancel any scheduled **POSTFILE**  
20 mediation.

21 **[(i)] (K)** (1) Within 5 days after receipt of a request for [foreclosure]  
22 **POSTFILE** mediation, the court shall transmit the request to the Office of  
23 Administrative Hearings for scheduling.

24 (2) (i) Within 60 days after transmittal of the request for  
25 foreclosure mediation, the Office of Administrative Hearings shall conduct a  
26 foreclosure mediation.

27 (ii) For good cause, the Office of Administrative Hearings may  
28 extend the time for completing the foreclosure mediation for a period not exceeding 30  
29 days or, if all parties agree, for a longer period of time.

30 (3) The Office of Administrative Hearings shall send notice of the  
31 scheduled foreclosure mediation to the foreclosure attorney, the secured party, and the  
32 mortgagor or grantor.

33 (4) The notice from the Office of Administrative Hearings shall:

1 (i) Include instructions regarding the documents and  
2 information, as required by regulations adopted by the Commissioner of Financial  
3 Regulation, that must be provided by each party to the other party and to the  
4 mediator; and

5 (ii) Require the information and documents to be provided no  
6 later than 20 days before the scheduled date of the foreclosure mediation.

7 **[(j)] (L) (1) (I) BY REGULATION, THE COMMISSIONER OF**  
8 **FINANCIAL REGULATION SHALL ESTABLISH A MEDIATION CHECKLIST THAT**  
9 **DESCRIBES THE MATTERS THAT SHALL BE REVIEWED AND CONSIDERED IN A**  
10 **POSTFILE MEDIATION.**

11 **(II) AT THE COMMENCEMENT OF A POSTFILE MEDIATION**  
12 **SESSION, EACH PARTY SHALL REVIEW THE MEDIATION CHECKLIST.**

13 **(III) THE MEDIATOR SHALL MARK EACH ITEM ON THE**  
14 **MEDIATION CHECKLIST AS THE ITEM IS ADDRESSED AT THE POSTFILE**  
15 **MEDIATION SESSION.**

16 **(IV) AT THE CONCLUSION OF A POSTFILE MEDIATION**  
17 **SESSION, EACH PARTY SHALL SIGN THE MEDIATION CHECKLIST.**

18 **(2)** At a foreclosure mediation:

19 (i) The mortgagor or grantor shall be present;

20 (ii) The mortgagor or grantor may be accompanied by a housing  
21 counselor and may have legal representation;

22 (iii) The secured party, or a representative of the secured party,  
23 shall be present; and

24 (iv) Any representative of the secured party must have the  
25 authority to settle the matter or be able to readily contact a person with authority to  
26 settle the matter.

27 **[(2)] (3)** At the foreclosure mediation, the parties and the mediator  
28 shall address loss mitigation programs that may be applicable to the loan secured by  
29 the mortgage or deed of trust that is the subject of the foreclosure action.

30 **[(3)] (4)** The Office of Administrative Hearings shall file a report  
31 with the court that states the outcome of the request for foreclosure mediation within  
32 the earlier of:

1 (i) 7 days after a foreclosure mediation is held; or

2 (ii) The end of the 60-day mediation period specified in  
3 subsection [(i)(2)] **(K)(2)** of this section, plus any extension granted by the Office of  
4 Administrative Hearings.

5 **[(4)] (5)** Except for a request for postponement or a failure to appear,  
6 the rules of procedure for contested cases of the Office of Administrative Hearings do  
7 not govern a foreclosure mediation conducted by the Office.

8 **[(k)] (M)** (1) If the parties do not reach an agreement at the [foreclosure]  
9 **POSTFILE** mediation, or the 60-day mediation period expires without an extension  
10 granted by the Office of Administrative Hearings, the foreclosure attorney may  
11 schedule the foreclosure sale.

12 (2) (i) **[Subject] IN THE CASE OF POSTFILE MEDIATION,**  
13 **SUBJECT** to subparagraphs (ii), (iii), and (iv) of this paragraph, the mortgagor or  
14 grantor may file a motion to stay the foreclosure sale.

15 (ii) A motion to stay under this paragraph shall be filed within  
16 15 days after:

17 1. The date the [foreclosure] **POSTFILE** mediation is  
18 held; or

19 2. If no [foreclosure] **POSTFILE** mediation is held, the  
20 date the Office of Administrative Hearings files its report with the court.

21 (iii) A motion to stay under this paragraph must allege specific  
22 reasons why loss mitigation should have been granted.

23 (3) Nothing in this subtitle precludes the mortgagor or grantor from  
24 pursuing any other remedy or legal defense available to the mortgagor or grantor.

25 **[(l)] (N)** A foreclosure sale of residential property may not occur until:

26 (1) If the residential property is not owner-occupied residential  
27 property, at least 45 days after service of process is made under subsection **[(f)] (H)** of  
28 this section;

29 (2) If the residential property is owner-occupied residential property  
30 and foreclosure mediation is not held, the later of:

31 (i) At least 45 days after service of process that includes a final  
32 loss mitigation affidavit made under subsection **[(f)] (H)** of this section; or

1 (ii) At least 30 days after a final loss mitigation affidavit is  
2 mailed under subsection [(g)] (I) of this section; and

3 (3) If the residential property is owner-occupied residential property  
4 and [foreclosure] **POSTFILE** mediation is requested, at least 15 days after:

5 (i) The date the [foreclosure] **POSTFILE** mediation is held; or

6 (ii) If no [foreclosure] **POSTFILE** mediation is held, the date the  
7 Office of Administrative Hearings files its report with the court.

8 [(m)] (O) Notice of the time, place, and terms of a foreclosure sale shall be  
9 published in a newspaper of general circulation in the county where the action is  
10 pending at least once a week for 3 successive weeks, the first publication to be not less  
11 than 15 days before the sale and the last publication to be not more than 1 week before  
12 the sale.

13 [(n)] (P) (1) The mortgagor or grantor of residential property has the  
14 right to cure the default by paying all past due payments, penalties, and fees and  
15 reinstate the loan at any time up to 1 business day before the foreclosure sale occurs.

16 (2) The secured party or an authorized agent of the secured party  
17 shall, on request, provide to the mortgagor or grantor or the mortgagor's or grantor's  
18 attorney within a reasonable time the amount necessary to cure the default and  
19 reinstate the loan and instructions for delivering the payment.

20 [(o)] (Q) An action for failure to comply with the provisions of this section  
21 shall be brought within 3 years after the date of the order ratifying the sale.

22 [(p)] (R) Revenue collected from the filing fees required under subsections  
23 [(d)(2)(vii)] (E)(2)(IX) and [(h)(1)(ii)] (J)(1)(III) of this section shall be distributed to  
24 the Housing Counseling and Foreclosure Mediation Fund established under § 4-507 of  
25 the Housing and Community Development Article.

26 **7-105.11.**

27 (A) **IN THIS SECTION, "VACANT PROPERTY" MEANS A PROPERTY THAT**  
28 **IS:**

29 (1) **UNOCCUPIED; AND**

30 (2) **UNFIT FOR HUMAN HABITATION, AS DETERMINED BY THE**  
31 **UNIT OF A COUNTY OR MUNICIPAL CORPORATION THAT MANAGES RESIDENTIAL**

1 PROPERTY MAINTENANCE AND ENFORCES THE HOUSING CODE FOR THAT  
2 JURISDICTION.

3 (B) A SECURED PARTY MAY APPLY TO A COUNTY OR MUNICIPAL  
4 CORPORATION FOR A CERTIFICATE OF VACANCY OR CERTIFICATE OF  
5 SUBSTANTIAL REPAIR FOR A RESIDENTIAL PROPERTY IF:

6 (1) THE RESIDENTIAL PROPERTY IS LOCATED IN THE COUNTY OR  
7 MUNICIPAL CORPORATION;

8 (2) THE COUNTY OR MUNICIPAL CORPORATION HAS  
9 ESTABLISHED PROCEDURES GOVERNING THE ISSUANCE OF A CERTIFICATE OF  
10 VACANCY OR CERTIFICATE OF SUBSTANTIAL REPAIR UNDER THIS SECTION; AND

11 (3) A DEFAULT HAS OCCURRED WITH RESPECT TO THE  
12 MORTGAGE OR DEED OF TRUST ON THE RESIDENTIAL PROPERTY.

13 (C) THE COUNTY OR MUNICIPAL CORPORATION SHALL ISSUE TO A  
14 SECURED PARTY A CERTIFICATE OF VACANCY OR A CERTIFICATE OF  
15 SUBSTANTIAL REPAIR FOR A RESIDENTIAL PROPERTY IF THE COUNTY OR  
16 MUNICIPAL CORPORATION DETERMINES, IN ACCORDANCE WITH ANY  
17 PROVISIONS OF THE LOCAL HOUSING CODE, THAT THE PROPERTY IS A VACANT  
18 PROPERTY.

19 (D) A CERTIFICATE OF VACANCY OR A CERTIFICATE OF SUBSTANTIAL  
20 REPAIR IS VALID AT THE TIME OF FILING AN ORDER TO DOCKET OR COMPLAINT  
21 TO FORECLOSE IF THE CERTIFICATE WAS ISSUED WITHIN 60 DAYS PRIOR TO  
22 THE TIME OF FILING.

23 (E) EXCEPT AS PROVIDED IN SUBSECTION (F) OF THIS SECTION, IF A  
24 CERTIFICATE OF VACANCY OR CERTIFICATE OF SUBSTANTIAL REPAIR IS VALID  
25 AT THE TIME OF FILING AN ORDER TO DOCKET OR COMPLAINT TO FORECLOSE, §  
26 7-105.1 OF THIS SUBTITLE DOES NOT APPLY TO AN ACTION TO FORECLOSE A  
27 MORTGAGE OR DEED OF TRUST ON THE PROPERTY FOR WHICH THE  
28 CERTIFICATE WAS ISSUED.

29 (F) (1) THE RECORD OWNER OR OCCUPANT OF A PROPERTY MAY  
30 CHALLENGE A DETERMINATION THAT THE PROPERTY IS A VACANT PROPERTY  
31 MADE UNDER SUBSECTION (C) OF THIS SECTION BY FILING A FORM WITH THE  
32 COURT AS PROVIDED IN THIS SUBSECTION.

33 (2) THE COMMISSIONER OF FINANCIAL REGULATION SHALL  
34 PRESCRIBE BY REGULATION THE FORM AND MANNER IN WHICH A RECORD

1 OWNER OR OCCUPANT MAY CHALLENGE A DETERMINATION THAT A PROPERTY  
2 IS A VACANT PROPERTY.

3 (3) THE SECURED PARTY SHALL PROVIDE TO THE RECORD  
4 OWNER AND OCCUPANT A COPY OF THE FORM REQUIRED BY REGULATION AT  
5 THE TIME OF FILING THE ORDER TO DOCKET OR COMPLAINT TO FORECLOSE.

6 (G) A COUNTY OR MUNICIPAL CORPORATION MAY ESTABLISH  
7 PROCEDURES GOVERNING THE ISSUANCE OF A CERTIFICATE OF VACANCY OR  
8 CERTIFICATE OF SUBSTANTIAL REPAIR UNDER THIS SECTION.

9 SECTION 2. AND BE IT FURTHER ENACTED, That an order to docket or  
10 complaint to foreclose served on a mortgagor or grantor before the effective date of  
11 regulations adopted by the Commissioner of Financial Regulation under Section 1 of  
12 this Act is in compliance with Maryland law if the order or complaint complies with §  
13 7-105.1 of the Real Property Article as it existed immediately before the effective date  
14 of this Act.

15 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
16 October 1, 2012.